



08-31-06

PATENT

Attorney Docket No. 101.0058-03000

Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	Confirmation No.: 5309
Gary K. Michelson	)	
Serial No.: 10/802,906	)	Group Art Unit: 3733
Filed: March 17, 2004	)	Examiner: Richard R. Shaffer
For: ORTHOPEDIC IMPLANT WITH	)	
LOCKING ELEMENT (as amended))	)	

Mail Stop RCE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**CERTIFICATE OF MAILING VIA U.S. EXPRESS MAIL**

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Date of Deposit: August 30, 2006

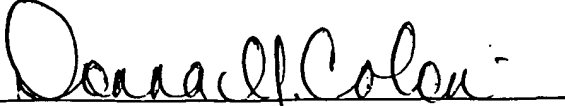
I hereby certify that:

1. Transmittal Form (in duplicate; \$1,360.00 total amount to cover the \$570 third-month extension fee and \$790 RCE fee is to be charged to Deposit Account No. 50-3726)
2. Request for Continued Examination (RCE) (in duplicate)
3. Amendment (w/Exhibit A)
4. Information Disclosure Statement Under 37 C.F.R. § 1.97(b) with Form PTO-1449 and 1 Document
5. Self-addressed return postcard receipt

are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service with sufficient postage under 37 C.F.R. § 1.10 on the date indicated above and are addressed to:

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P.O. Box 1450  
Alexandria, VA 22313-1450

Date: August 30, 2006

  
Donna M. Colon

1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone No.: (330) 877-0700  
Facsimile No.: (330) 877-2030



In re application of:

Gary K. Michelson

Serial No: 10/802,906

Filed: March 17, 2004

For: ORTHOPEDIC IMPLANT WITH LOCKING  
ELEMENT (as amended)

Confirmation No.: 5309

Art Unit: 3733

Examiner: Richard R. Shaffer

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Transmitted herewith is a Request for Continued Examination (RCE) and an Amendment in reply to the Advisory Action of August 21, 2006 and Final Office Action dated March 20, 2006 in the above-identified application.

- ☐ No additional fee is required.
- ☒ Applicant hereby requests a third-month extension of time to respond to the above Office Action (a two-month extension was previously paid on 08/07/06).
- ☒ An Information Disclosure Statement with Form PTO-1449 and one document are enclosed.

The fee has been calculated as shown below:

	(Col. 1) CLAIMS REMAINING AFTER AMENDMENT		(Col. 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Col. 3) PRESENT EXTRA*	LG/SM \$ ENTITY FEE	ADD'L FEE DUE
TOTAL CLAIMS FEE	35	-	35	0	LG=\$50 SM=\$25	\$ 0
INDEPENDENT CLAIMS FEE	1	-	3	0	LG=\$200 SM=\$100	\$ 0
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIMS					LARGE ENTITY FEE = \$360 SMALL ENTITY FEE = \$180	\$ 0
TOTAL						\$ 0

\* If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.

\*\* If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, write "20" in this space.

\*\*\* If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, write "3" in this space. The "Highest Number Previously Paid For" (Total or Independent) is the highest number found from the equivalent box on Col. 1 of a prior amendment or the number of claims originally filed.

- ☒ The total amount of \$1,360.00 to cover the \$570 third-month extension fee and \$790 Request for Continued Examination (RCE) fee is to be charged to Deposit Account No. 50-3726.
- ☒ The Commissioner is hereby authorized to charge any deficiencies of fees associated with this communication or credit any overpayment to Deposit Account No. 50-3726. **A copy of this sheet is enclosed.**
- ☐ Any filing fees under 37 C.F.R. § 1.16 for the presentation of extra claims
- ☒ Any patent application processing fees under 37 C.F.R. § 1.17

Respectfully submitted,

MARTIN &amp; FERRARO, LLP

Date: August 30, 2006By: Amedeo F. Ferraro  
Registration No. 37,1291557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: (330) 877-0700  
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Transmittal of RCE



*Karlin-P 813114*  
*85 D 7994*  
**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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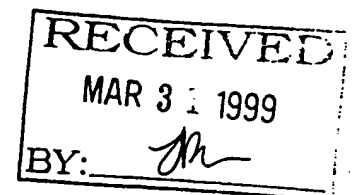
DATE: 1999  
FILED: 1999  
OFFICE: 1999  
NOTE: BEST AVAILABLE COPY

EXAMINER	
ART UNIT	PAPER NUMBER

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks



**RECEIVED**  
**APR 01 1999**  
**DOCKETING**

RECEIVED: \_\_\_\_\_  
DATE: \_\_\_\_\_

RECEIVED: \_\_\_\_\_  
ACTION: \_\_\_\_\_  
ON: \_\_\_\_\_

DOCKETED BY: \_\_\_\_\_

EXHIBIT A

# Office Action Summary

Application No.

09/022,293

Applicant(s)

Michelson

Examiner

Guy V. Tucker

Group Art Unit

3731



☐ Responsive to communication(s) filed on \_\_\_\_\_

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 0 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-537 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 1-537 are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-434, drawn to a bone plate, classified in class 606, subclass 70.
- II. Claims 435-451, drawn to a method of treating a spine, classified in class 606, subclass 61.
- III. Claims 453-459, drawn to a spinal ompressor, classified in class 606, subclass 61.
- IV. Claims 460-470, drawn to a pilot hole former, classified in class 606, subclass 86.
- V. Claims 471-490, drawn to a bone screw, classified in class 606, subclass 73.
- VI. Claims 491-537, drawn to a locking element, classified in class 606, subclass 60.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions s II and (I,III,IV,V,VI) are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another and materially different process, such as repairing fractured long bones.

3. Inventions I, III, IV, V and VI are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention all the subcombinations have separate utility such as being used separately. See MPEP § 806.05(d).

4. Because these inventions are distinct for the reasons given above and have acquired a

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separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

6. This application contains claims directed to the following patentably distinct species of the claimed invention:

- a. The embodiment of figures 1-30
- b. The embodiment of figures 47-59
- c. The embodiment of figures 71-79
- d. The embodiment of figure 83.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations

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of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

A telephone call was made to Lewis Anten on 3-21-99 to request an oral election to the above restriction requirement, but did not result in an election being made.

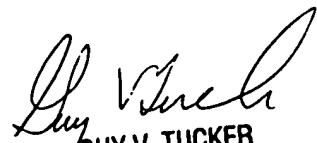
Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Guy Tucker at telephone number (703) 308-3271. Examiner Tucker can normally be reached on Monday through Thursday from 7:00 AM to 5:30 PM, Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, examiner Tucker's supervisor, Michael Buiz, can be reached at (703) 308-0871. The fax number for Group 3730 is (703) 305-3590 or 3591.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group 3730 receptionist at (703) 308-0858.

GVT  
March 22, 1999

  
GUY V. TUCKER  
PRIMARY EXAMINER  
GROUP 3300